IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 17928 of 2007(H)

PETITIONER:

B. THALMI,
TC/25/1037-(I), EAST THAMBANNOOR,
THYCAUD P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.V.JAYAKUMAR

RESPONDENTS:

1. THE UNIVERSITY OF KERALA,
   REPRESENTED BY THE REGISTRAR, UNIVERSITY BUILDINGS
   THIRUVANANTHAPURAM.

2. THE VICE CHANCELLOR,
   UNIVERSITY OF KERALA, UNIVERSITY BUILDINGS,
   THIRUVANANTHAPURAM.

3. THE STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. K. RAHMATHULLA,
   ZAINA NIVAS, NEAR MUNICIPAL TOWN HALL,ATTINGAL.

BY ADV. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.
SRI.R.RAJASEKHARAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON 18.9.2007 DELIVERED THE FOLLOWING:

W.P(C).No. 17928/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE NOTIFICATION DTD.28.9.02.

P2. COPY OF THE COMMUNICATION BY R1 DTD.17.4.07.

P3. COPY OF THE REPORT IN MADHYAMAN DTD.19.5.2007.

P4. COPY OF THE -DO- DTD.26.5.97 IN MANGALAM DAIL7.

P5. COPY OF THE -DO IN KERALA KAUMUDI DTD.27.5.07.

P6. COPY OF THE M.SC.MARK LIST OF THE PETITIONER.

P7. COPY OF THE M.PHIL. DEGREE.

P8. COPY OF THE NET CERTIFICATE.

P9. COPY OF THE JUDGMENT IN W.A.NO.487/98.

P10. COPY OF THE ORDER BY R1 DTD.31.1.2007.

P11. COPY OF THE REPRESENTATION DTD.17.5.07 BEFORE R1.

P12. COPY OF THE REPRESENTATION DTD.30.5.07 BEFORE R1.

P13. COPY OF THE REPRESENTATION DTD.31.5.07 BEFORE R1.

P14. COPY OF THE LETTER DTD.16.6.07.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.17928 of 2007

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Dated this the 18th day of September, 2007

J U D G M E N T

The petitioner herein is an aspirant for appointment to the post of Lecturer in the department of Mathematics of the University of Kerala in a post reserved for Muslims. Applications were invited by the University from eligible candidates for appointment to the said post and other posts, by Ext.P1 notification. As per the said notification, besides fulfilling the educational qualifications mentioned therein, the candidates should have acquired National Eligibility Test (NET for short) for lectureship conducted by the UGC, CISR or similar tests accredited by the UGC as a necessary qualification for the post. However, candidates who had completed M.Phil degree by 31st December, 1993 were exempted from the requirement of pass in NET. The petitioner possessed all the qualifications prescribed, including NET. However, the 4th respondent did not possess the

NET qualification. He claimed to have completed M.Phil degree by 31st December, 1993, which is disputed by the petitioner. However, the University selected the 4th respondent for appointment, which selection is challenged by the petitioner in this writ petition.

2. The contention of the petitioner is that the question as to whether the 4th respondent had obtained M.Phil degree by 31st December, 1993, was earlier the subject matter of a writ petition and a writ appeal, viz., O.P.No.11436/96 and W.A.No.487/1998 and in the said writ appeal, a Division Bench of this court had affirmed the decision of the learned Single Judge in the original petition, holding that the 4th respondent obtained the said qualification only on 5.6.1995 and therefore, the 4th respondent cannot now contend that he was qualified for the present post by virtue of the exemption from NET on account of his having completed M.Phil. Degree by 31st December, 1993. The petitioner further contends that once the 4th respondent is found to be ineligible for selection to the post, by virtue of the fact that the petitioner is the next Muslim candidate in line eligible for

selection, she should be directed to be appointed in the place of the 4th respondent. To prove that the petitioner was the next Muslim candidate eligible for such appointment, she relies on Ext.P14 information obtained by her from the Public Information Officer of the University of Kerala in exercise of her right under the Right to Information Act, 2005, which according to her, would go to show that she was the second Muslim candidate eligible for appointment. The petitioner therefore seeks the following reliefs:

> "i) A Writ of Mandamus or any other appropriate writ, order or direction directing the respondents No. 1 and 2 not to appoint the 4th respondent to the post of Lecturer in the Department of Mathematics under 1st respondent University pursuant to Ext.P1 notification.
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> ii) A declaration that the 4th respondent is not qualified for appointment to the post of Lecturer in the Department of Mathematics under the 1st respondent University in terms of Ext.P1 notification;
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> iii) A Writ of Mandamus or any other appropriate writ, order or direction, directing the 1st respondent to publish the select list in pursuance of the interview held on 25.04.2007 in terms of Ext.P1 notification and to appoint the petitioner if she is eligible on the basis of the select list to the vacancy reserved for the Muslim Community.
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> iv) Pass an interim order of stay of appointment of 4th respondent to the post of Lecturer in the Department of Mathematics under the 1st respondent University, during the pendency of this Writ Petition."

3. Both the University as well as the 4th respondent

oppose the contentions of the petitioner. According to them, the 4th respondent had in fact completed M.Phil. Degree by 31st December, 1993 as proved by Ext.R4(a) degree certificate issued by the University and therefore, he is exempted from acquiring the NET qualification for the purpose of becoming eligible for selection pursuant to Ext.P1 notification. They would submit that although the examination for M.Phil. Degree for the 1992-93 batch was over much before 31st December, 1993, the valuation of the thesis and declaration of results could not be done until June, 1995 and since the delay in declaration of results was not on account of any fault on the part of the candidates appearing in the examination, the University decided to issue them degree certificates declaring them to have passed the examination as on 31.12.1993. They would also rely on Ext.R1(a) minutes of the 57th meeting of the syndicate of the University held on 19.11.1993 approving Ext.R1(b) minutes of the meeting of the Advisory Committee for the M.Phil course for teachers in colleges held on 22.10.1993 in support of their contention. Regarding Ext.P9 judgment they would contend that,

that judgment was rendered on a mistaken fact and in fact another Division Bench had in Ext.R1(e) decision did not follow that decision. They would point out that although in Ext.R1(e) judgment the Division Bench did not refer to Ext.P9 judgment, in Ext.R1(d) judgment from which Ext.R1(e) judgment arose there was specific reference to Ext.P9 judgment. Therefore, they would contend that Ext.P9 judgment cannot be pressed into service to hold that the 4th respondent has not completed M.Phil. Degree by 31st December, 1993. Another contention is also raised to the effect that what is contemplated in Ext.P1 notification is completion of M.Phil course by 31st December, 1993 and not obtaining M.Phil degree by 31st December, 1993.

4. I have considered the rival contentions in detail.

5. It is not disputed before me by the respondents that Ext.P9 has not been subjected to further challenge and therefore, the same has become final. The 4th respondent in this writ petition is the appellant in W.A.No.487/98, in which Ext.P9 judgment has been passed. The issue involved therein was as to whether on the last date of submission of application for selection

to the post of lecturer viz., 20.1.1995 the 4th respondent herein was qualified as possessing M.Phil degree in Mathematics. The contention raised by the 4th respondent in that writ petition was that he had the requisite qualification as on 20.1.1995, since he had obtained M.Phil degree by 31.12.1993. The Division Bench noted that the viva voce test for the M.Phil. Examination of the 4th respondent was conducted on 26.4.1995 and results were published on 5.6.1995. Therefore, the Division Bench held that the 4th respondent obtained his M.Phil degree only on 5.6.1995 and that being so, on the last date of submission of the application, viz., 20.1.1995, the appellant was not eligible to apply. There also, the 4th respondent as well as the University raised the contention that the written examination was over by May, 1993 and even though the viva voce test was conducted only on 26.5.1995, the University had, by order dated 4.7.1996 produced as Annexure II order along with the writ appeal, accepted the recommendation of the Syndicate that when the degree certificate of candidates both part time and full time M.Phil examinations of 91-92 and 92-93 batches are issued they will be dated December 31 and on that basis, the successful

candidates as per the results announced on 5.6.1995 should be deemed to have obtained M.Phil degree on 31.12.1993. Relying on the judgment of the Supreme Court in *Charles K.Skaria and others V. Sr.C.Mathew and Others* (AIR 1980 SC 1230) which was followed by a Division Bench in *Ravunnikutty v. Rosalind & others* (1987 [2] KLT 716), the learned Single Judge had held that a candidate can claim to have passed the examination only when the result of the examination was finally made known by the concerned University, the learned Single Judge, held that, the 4th respondent herein was not possessing the requisite qualification of M.Phil degree as on 20.1.1995 as he became qualified only in June, 1995. This decision was under challenge in the above-said writ appeal. After reproducing Annexure II order of the University deciding to issue M.Phil degree certificates to the candidates of the batch 1992-93 with the date of obtaining the degree as 31st December, 1993, the Division Bench held thus:

> "10. A careful perusal of Annexure II filed in this appeal would show that even to claim the benefits conferred therein one has to satisfy the following:
>
> a) the candidate must have passed Part I examination.
>
> b) he must have submitted his thesis before 31st December of that year.

c) he must be successful in valuation of dissertation and Viva voce.

Assuming for a moment that such an order (Annexure II) referred supra is valid, as far as the present case is concerned, it may be pointed out that the appellant did not submit his thesis before 31st December, 1993 and that being so, he does not satisfy the second condition. That being the factual position the appellant cannot claim any benefit by virtue of the said order. That apart we are at loss to understand what prompted the Syndicate to take such a decision. It cannot be disputed that Viva Voce is also part of the examination. A candidate will not be eligible to get his M.Phil degree unless appears in the Viva voce and obtain required marks. Admittedly here in this case Viva voce was conducted only on 26.4.1995. If that is so, to give a retrospective affect and to declare that once candidates get through the examination successfully the degree will be dated as 31st December, 1993 is arbitrary, irrational, illogical and without any basis whatsoever. We do not understand the purpose or object for which such an order came to be passed. Such an order cannot be justified in the eye of law."

(Emphasis supplied)

6. As I have already stated, this judgment has become final. The contention of the respondents is that in view of the subsequent Division Bench judgment, Ext.P9 judgment cannot be relied upon to hold that the petitioner did not obtain M.Phil. Degree on 31.12.1993.

7. I have also considered Ext.R1(e) judgment which is the later Division Bench decision relied on by the respondents. First of all, even assuming that a later Division Bench had taken a different view, in so far as Ext.P9 judgment is in an appeal filed by the 4th respondent himself, the 4th respondent cannot now

escape from the consequences of Ext.P9 judgment, on the basis of Ext.R1(e) judgment in so far as he would be bound by Ext.P9 judgment in the matter of his date of acquiring of M.Phil qualification. Further, in Ext.R1(e) judgment the question as to whether a degree can be issued with a date prior to the declaration of the results of the examination was not considered at all whereas in Ext.P9 judgment it has been specifically considered and answered in the negative also. In Ext.R1(e) judgment the University was the appellant, who contended that the degree could not have been ante-dated which contention apparently was based on Ext.P9 judgment. In fact it appears that the University themselves had conceded that there was a practice of granting ante-dated degree until the University took a decision to stop that practice with effect from 28.8.97. It is based on this admission of the University that the later Division Bench had rendered that decision. In Ext.R1(e) judgment the later Division Bench did not dissent from Ext.P9 judgment although the same was referred to in Ext.R1(d) judgment of the learned Single Judge from which only Ext.R1(e) judgment arose. That being so, I am not satisfied that the 4th respondent and the

University can now rely on Ext.R1(e) judgment to hold that the 4th respondent is actually qualified for selection to the post.

8. There is another aspect also. In Ext.R1(e) judgment, the Division Bench only held that the practice was to treat the date of submission of thesis as the date of effect of degree certificate. Therefore, if at all, even going by Ext.R1(e) judgment, the 4th respondent could have been held to be qualified only on the date of submission of his thesis. In Ext.P9 judgment it has been noted in paragraph 8 as follows:

> "8. The admitted facts are, applications were called for by notification dated 3.1.1995. The qualification required was post-graduate degree in Mathematics with M.Phil degree. The written examination (Part I) was conducted by the University in May, 1993. The appellant submitted his thesis/dissertation in April, 1994. The Vive Voce was conducted on 26.4.1995 and the result was published on 5.6.1995."
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> (Emphasis supplied)

After having admitted that the 4th respondent submitted thesis in April, 1994 in the appeal, the 4th respondent herein took the contention that he had submitted his dissertation on 31.12.1993. The Division Bench noted that this was contrary to what the 4th respondent has stated in the counter affidavit in the original petition and because of that, the Division Bench had also

directed the 4th respondent to pay costs in that appeal. This is clear from paragraph 12 of Ext.P9 judgment, which reads thus:

> "12. We are inclined to award costs of Rs.2000- (Rs.Two thousand only) payable by the appellant to the 6th respondent for two reasons. (1) The appeal is totally devoid of merit and (2) while in the additional counter affidavit filed by the appellant in the original petition on 23.10.1996 it is clearly stated that dissertation was submitted in April 1994, a reading of 'Ground B' in this appeal would give a very clear and irresistible impression that the appellant submitted his dissertation before 31.12.1993. We do not understand how the appellant can make such a statement in the said Ground B, which is contrary to his own admitted case before the learned Single Judge in his additional counter affidavit."
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> (Emphasis supplied)

That being so, the 4th respondent cannot now contend that he had submitted his dissertation before 31.12.1993. As such, even going by Ext.R1(e) judgment, the 4th respondent did not obtain M.Phil degree by 31.12.1993. In so far as there is a finding in this regard by a Division Bench of this Court in an appeal filed by the 4th respondent on the same question, the 4th respondent cannot contend otherwise on the basis of certificate dated 6.7.2007 issued by the Registrar of the University of Kerala. In fact I am of opinion that in view of the finding to the contrary in Ext.P9 judgment, in which the University was also a party the Registrar of the University ought not to have issued that certificate, since the finding in Ext.P9 judgment is binding on the University as well

as the 4th respondent.

9. The University have in their counter affidavit taken a strange stand that what was applicable to the 4th respondent's case was not the University order dated 4.7.1996 mentioned in Ext.P9 judgment, but Exts.R1(a) and R1(b) minutes produced by them in this writ petition. But I note that Exts.R1(a) and R1(b) are dated 19.11.1993 and 22.10.1993 respectively, ie. before the viva voce examination and declaration of results leading to the issue of the degree with the crucial date, viz., 31.12.1993 to the 4th respondent. In any event the University themselves had contended before the Division Bench, in Ext.P9 judgment, that the 4th respondent's case was governed by the University order dated 4.7.1996 and the Division Bench considered the claims of the 4th respondent based on that order only. I do not think that the University can take a different stand now, which even otherwise appears to be unsustainable.

10. The contention of the 4th respondent that what is contemplated in Ext.P1 is completion of M.Phil degree by 31st December, 1993 and not obtaining degree by 31st December, 1993 and therefore, if the 4th respondent had completed M.Phil.

Degree by 31st December, 1993, that would be sufficient cannot be accepted for two reasons. Firstly, the words used in Ext.P1 is "completion of M.Phil. Degree" and not "completion of M.Phil. Course" by 31st December, 1993. Secondly, the completion of the M.Phil. Course would include submission of dissertation also which, as held by the Division Bench in Ext.P9 judgment, the 4th respondent had not done before 31.12.1993. Therefore, I do not find any merit in this contention also.

11. The counsel for the 4th respondent, based on the decision of the supreme court in *UNION OF INDIA AND ANR. V. MAJOR BAHADUR SINGH* reported in 2006 (1) SCC 368, contended that the reliance placed on Ext.P9 judgment is not sustainable since the Supreme Court had held that judgments of courts should not be interpreted as statutes. The reliance on the said Supreme Court judgment is misplaced since that would be applicable only when applying the ratio of a particular decision to a different set of facts in another case. Here, that is not the case. Ext.P9 is the judgment in the 4th respondent's own case. Reliance on Ext.P9 judgment is on the basis of the principles akin to that of *resjudicata*. The 4th respondent also raises a contention based

on the decision of the Supreme Court in *Neelima Misra v. Harinder Kaur Paintal & ors*. reported in AIR 1990 SC 1402, to the effect that in academic matters courts should be slow to act since the University is the competent authority to finally decide on the academic matters. I am not able to countenance this contention also since when a person selected is shown to be demonstrably unqualified to be considered for a post, this court cannot repel the challenge against such selection on the ground that it is an academic matter and the University is the final authority to decide such matters, that too when the issue is covered against him by an earlier Division Bench decision.

12. The result of the above discussion is that the petitioner has clearly established that the 4th respondent was not qualified for consideration for selection as per Ext.P1 notification. Therefore, I declare that the 4th respondent was not qualified for selection for appointment to the post of lecturer in Mathematics under the 1st respondent University in terms of Ext.P1 notification. Therefore, the selection and appointment of the 4th respondent pursuant to Ext.P1 notification is hereby quashed. In

view of the fact that going by Ext.P14 the petitioner is the next person in line qualified to be appointed in the post reserved for Muslims and the petitioner being a Muslim candidate who has not been held to be unfit for selection, I direct that the petitioner be appointed in the place of the 4th respondent. Orders in this regard shall be issued within one month from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.